# The Indiana Prosecutor

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## RECENT DECISIONS

### TAKING BLOOD BY FORCE ILLEGAL, COURT SAYS

***Hannoy v. State***
**____N.E.2d____**
**(Ind. Ct. App. 6/10/03)**

On August 11, 2000, Elis Hannoy drove his minivan across the center line on Fall Creek Road in Indianapolis and collided head on with the car occupied by John and Flora Wells. Both of the car's occupants died as a result of injuries sustained in that crash. Following the policy of the Marion County Sheriff's Department at that time, Deputy Brian Dixon was dispatched to the hospital to which Hannoy had been transported to request a blood draw. Dixon did not ask Hannoy's consent, nor did any law enforcement officer have probable cause to believe Hannoy was intoxicated at the time blood was drawn. The results of tests run on that blood sample revealed Hannoy's blood alcohol content to be between .194 and .206%.

The Sheriff's Department, in developing this policy, interpreted I.C. 9-30-7 to automatically authorize obtaining blood, by force if necessary, from the driver of any car involved in a crash resulting in serious bodily injury or death. The Court of Appeals held that nothing in 9-30-7 authorized Deputy Dixon to forcibly take a blood sample from Hannoy if consent had not been obtained. Rather, the Court said, as with I.C. 9-30-6, civil penalties apply upon a driver's failure to consent. Deputy Dixon's failure to comply with Indiana's implied consent laws meant that the implied consent laws could not be invoked to justify the drawing of Hannoy's blood, the Court said.

The State argued on appeal that the drawing of Hannoy's blood fit within the "special needs" exception to the generally recognized search warrant requirement. Judge Barnes, writing for the Court of Appeals, said that the special needs exception does not apply to law enforcement-related searches.

The State also argued that Hannoy did not resist the draw of his blood and that this failure to resist constituted "actual consent." The Court did not buy this argument either. Consent must be freely and voluntarily given. Consent is invalid if procured by fraud, duress, fear, intimidation or where merely a submission to the supremacy of the

law. Hannoy's failure to resist after Deputy Dixon said "You have been involved in a car accident, it is my duty to check your blood for alcohol," can only be characterized as a mere submission to the supremacy of the law, the Court said. The Court concluded that consent was not freely and voluntarily given in this case.

About an hour after the blood draw pursuant to Deputy Dixon's request, the hospital drew blood for diagnostic purposes. The test results on that blood showed the defendant's BAC between .182 and .193%. The results of that test were properly admitted into evidence, the Court said. The results of the hospital blood draw will be admissible in the event Hannoy is retried.

**POLICE OFFICER'S STATEMENT IS STATEMENT OF PARTY OPPONENT**

*Allen v. State*
____N.E.2d_____
(Ind. Ct. App. 5/5/03)
*Petition to Transfer filed*

William Allen was convicted of dealing in marijuana, dealing in cocaine and possession of cocaine with a firearm. On appeal, Allen argued that the trial court erred in excluding as hearsay a statement made by a police officer prior to Allen's arrest.

At trial the arresting officer denied that he told or implied to Allen that if Allen did not admit that the guns and drugs found in the house were his, everyone in the house would be arrested. During Allen's case-in-chief, however, Allen presented testimony by a person in the house at the time the police entered. That witness testified that the officer had in fact made such a statement.

The Court of Appeals held that Evidence Rule 801(d)(2) applies to the government in criminal cases. The Court held that the trial court erred in excluding the officer's statement regarding a matter within the scope of his employment. Such a statement, according to the Court, is the statement of a party-opponent and is not hearsay. In that the exclusion of the officer's exact words likely had little effect on the jury's decision, however, the Court concluded that exclusion of this proffered testimony was harmless error.